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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In Re:

JASON PHILIP POWELL,

Debtor.

Case No: BK-21-50147-btb
Chapter 13

TICO CONSTRUCTION COMPANY
INC, a Nevada Corporation,

Plaintiff,

v.

JASON PHILIP POWELL, an individual,

Defendant.

Adv. Case No.:

**COMPLAINT FOR OBJECTION TO
DEBTOR’S DISCHARGE AND
DISCHARGEABILITY UNDER
SECTIONS 523 OF THE BANKRUPTCY
CODE**

Plaintiff-Creditor TICO CONSTRUCTION COMPANY INC, a Nevada corporation (“TICO” or “Plaintiff”) as and for its Complaint against Defendant-Debtor, JASON PHILIP POWELL (“Debtor” or “Powell” or “Defendant”), respectfully alleges:

JURISDICTION

1. On March 1, 2021, the Debtor filed a voluntary petition (“Petition”) for relief under Chapter 13 of Title 11 of the United States Bankruptcy Code (“Bankruptcy Code”) in the United States Bankruptcy Court for the District of Nevada, Case No. BK-21-50147-BTB (the “Bankruptcy Case”).

2. The Debtor filed his Bankruptcy Schedules and Statement of Financial Affairs

1 on March 15, 2021. *See* ECF No. 14 (respectively, the “Schedules” and “SOFA”).¹

2 3. The Debtor’s meeting of creditors under Section 341(a) of the Bankruptcy Code
3 commenced on April 14, 2021 [*See* ECF No. 6] and was continued to June 2, 2021 at 9:30 a.m.
4 *See* ECF Nos. 5 and 21.

5 4. As of the date of this Complaint, the Debtor has not been granted a discharge.

6 5. This is a core adversary proceeding in which Plaintiff is objecting to the Debtor’s
7 discharge and dischargeability of certain debts under Section 523 of the Bankruptcy Code. *See*
8 28 U.S.C. § 157(b)(2)(I).

9 6. The Court has jurisdiction under 28 U.S.C. § 1334 and Bankruptcy Code § 523.

10 **PARTIES**

11 7. TICO is a Nevada corporation and is a creditor in Debtor’s Bankruptcy Case.

12 8. Powell is the Debtor in the Bankruptcy Case.

13 9. Debtor’s Bankruptcy Schedules indicate the Debtor resides in Washoe County,
14 Nevada, at 136 Juanita Drive # 27, Incline Village, Nevada 89451 (“Juanita Residence”).

15 **GENERAL ALLEGATIONS**

16 10. On May 9, 2000, TICO filed a civil Complaint in the Second Judicial District
17 Court, Washoe County, Nevada (“State Court”) against Powell and Genseven Development and
18 Construction, a Nevada limited liability company (“Genseven”), commencing Case No. CV08-
19 01202 (“State Court Action”). A copy of TICO’s Complaint in the State Court Action is
20 attached as **Exhibit 1** (“State Court Complaint”).

21 11. As set out in the State Court Complaint, TICO employed Powell as a Senior
22 Project Manager under a written contract (“Employment Agreement”). *See* State Court
23 Complaint at ¶ 9.

24 12. Powell’s Employment Agreement contained non-compete and non-disclosure
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28 ¹ References to “ECF No.” are to the Docket entries in the Bankruptcy Case.

1 covenants. *See* State Court Complaint at ¶¶ 10-12.

2 13. As a result of Powell's position as TICO's Senior Project Manager, Powell was
3 provided with information regarding TICO's business practices, management, finances,
4 employees, contract negotiations, bids, and contract proposals. *See* State Court Complaint at ¶
5 14.

6 14. On or about January 25, 2008, Powell advised TICO he was resigning from
7 TICO to become a full partner at Genseven. *See* State Court Complaint at ¶ 25.

8 15. Prior to resigning at TICO, Powell formed and/or materially participated in the
9 formation of Genseven. *See* State Court Complaint at ¶¶ 22, 23.

10 16. As alleged in the State Court Complaint, Powell misappropriated TICO's trade
11 secrets and effectively stole or embezzled work and/or information belonging to TICO and used
12 it for his own and Genseven's benefit. *See* State Court Complaint at ¶¶ 18-25, 29-42, 47-52, 56-
13 60, 63-72, 75-81, 84-88, 91-97, 100-106, 109-111.

14 17. Powell's misconduct was specifically related to a construction project to build an
15 office building for Signature Landscaping (the "Signature Landscaping Project").

16 18. On July 21, 2008, the State Court entered an *Order* referring TICO's claims
17 against Powell to binding arbitration, with the State Court retaining TICO's claims against
18 Genseven.

19 19. On August 14, 2008, TICO filed a TICO's *Motion for Default Judgment and*
20 *Attorney's Fees and Costs Pursuant to Nev. R. Civ. P. 37* ("Motion for Sanctions"), seeking
21 case ending sanctions against Genseven based on Genseven's and Powell's discovery abuses—
22 specifically the failure to disclose crucial documentary evidence related to the Signature
23 Landscaping Project (which TICO uncovered by way of third-party subpoena).

24 20. On September 29, 2009, the State Court entered an *Order* granting TICO's
25 Sanction's Motion. The State Court entered a default judgment against Genseven, finding
26 Genseven "employed abusive litigation practices when it withheld correspondence which was
27 specifically requested by Plaintiff during discovery."
28

1 21. On January 13, 2010, the State Court entered a *Judgment* against Genseven
2 awarding TICO damages of \$215,149.86, plus an additional \$75,907.82 in attorney's fees and
3 costs (the "Genseven Judgment").

4 22. On April 28, 2010, a *Satisfaction of Judgment* was entered in the State Court
5 Action indicating Genseven satisfied the Genseven Judgment by way of payment of \$75,000.

6 23. On June 21, 2010, the arbitration proceeding against Powell came on for hearing
7 ("Arbitration Hearing") before the arbitrator, Robert Ezenberger ("Arbitrator").

8 24. After hearing the evidence presented during the Arbitration Hearing, the
9 Arbitrator entered its *Arbitrator's Award* against Powell finding, "[b]ased on the evidence
10 presented at the arbitration hearing concerning the cause of action for breach of contract, the
11 arbitrator finds in favor of TICO Construction Company, Inc. and against Jason Powell, and
12 awards damages in the amount of \$215,140,86 plus reasonable attorney's fees and costs
13 incurred in connection with this arbitration proceeding, pursuant to the employment contract
14 entered into between the parties."

15 25. On July 23, 2010, the State Court entered a *Judgment on Arbitrator's Award* in
16 favor of TICO and against Powell for \$215,629.86, plus post-judgment interest at the statutory
17 rate ("Powell Judgment"), which TICO recorded in the Office of the Washoe County Recorder
18 on September 24, 2010, as DOC # 3926035, creating a judgment lien on all of Powell's
19 property in Washoe County, Nevada. See **Exhibit 2**.

20 26. On July 19, 2020, TICO renewed the Powell Judgment by filing an *Affidavit of*
21 *Renewal of Judgment Pursuant to NRS § 17.214* (the "Powell Judgment Renewal"), which
22 TICO recorded in the Office of the Washoe County Recorder on July 20, 2020, as DOC #
23 4611760. See **Exhibit 3**.

24 27. On April 13, 2021, TICO filed POC 8-1 in the Bankruptcy Case, asserting a
25 secured claim (i.e., judgment lien) against Powell's bankruptcy estate in the amount of
26 \$364,066.51 ("TICO Proof of Claim").

27 28. TICO's claim is secured in whole or in part by any non-exempt equity in the
28

1 Juanita Drive Property (as well as Powell's non-exempt interest in any other real property
 2 located in Washoe County) after satisfaction of any purchase money deed of trust, if any. *See*
 3 NRS 107.026; *see also* NRS 17.150(2); 11 U.S.C. § 522(p)(1).

4 **FIRST CAUSE OF ACTION - 11 U.S.C. § 523(a)(4)**

5 29. Plaintiff hereby realleges and incorporates by reference all preceding paragraphs.

6 30. Powell either: (a) acted in a fiduciary capacity as TICO's Senior Project
 7 Manager and the Employment Agreement and/or Nevada's Uniform Trade Secrets Act [NRS
 8 600A.010, et. seq.] created trust like obligations that Powell violated by committing fraud
 9 and/or defalcation in connection with the Signature Landscaping Project; (b) embezzled and/or
 10 misappropriated TICO's confidential information and/or trade secrets in connection with the
 11 Signature Landscaping Project because he was in rightful possession of this information as a
 12 non-owner, appropriated this information for a purpose other than for which Powell was
 13 entrusted, and there are circumstances (such as concealment and deception) indicating fraud;
 14 and/or (c) Powell committed common law larceny of TICO's confidential and/or trade secret
 15 information in connection with the Signature Landscaping Project.

16 31. Powell's conduct in connection with the Signature Landscaping Project,
 17 including as alleged in the State Court Complaint and shown during the Arbitration Hearing,
 18 renders the Powell Judgment, Powell Judgment Renewal, and/or TICO Proof of Claim
 19 nondischargeable under 11 U.S.C. § 523(a)(4).

20 **SECOND CAUSE OF ACTION – 11 U.S.C. § 523(a)(6)**

21 32. Plaintiff hereby realleges and incorporates by reference all preceding paragraphs.

22 33. Powell's conduct in connection with the Signature Landscaping Project, which
 23 formed the basis of the State Court Complaint and ultimately lead to the Powell Judgment, was
 24 willful and malicious. In this, Powell either had a subject motive to inflict injury upon TICO, or
 25 Powell believed, knew, or reasonably should have known that an injury to TICO was
 26 substantially certain to result from Powell's conduct.

27 34. In addition to the Signature Landscaping Project, Powell inflicted independent
 28

willful and malicious injuries upon TICO by way of the following (individually and collectively, the “Pre-Petition Date Transfers”): (a) one or more pre-Petition Date transfers made by the Powell to Melissa Hooven (aka Melissa Powell) under an ostensible marital settlement agreement and/or divorce decree entered in Case No. 2020-DI-00264, Ninth Judicial District Court, Douglas County, Nevada; (b) a pre-Petition Date transfer of real property occurring on or about November 1, 2017, transferring Debtor’s ownership interest in APN 1320-33-816-044 in Douglas County, Nevada to Melissa L. Hooven (aka Melissa L. Powell), via a Grant, Bargain, and Sale Deed recorded in the Douglas County Recorder’s Office on November 2, 2017, as document 2017-906435; (c) a pre-petition transfer of real property occurring on or about June 11, 2019, transferring Debtor’s ownership interest in APN 1320-32-133-004 in Douglas County, Nevada to Melissa L. Powell (aka Melissa Hooven), via a Grant, Bargain, and Sale Deed recorded in the Douglas County Recorder’s Office on June 19, 2019, as document 2019-930620. Powell accomplished each of the foregoing acts with either a subject motive to inflict injury on TICO, or Powell believed, knew, or reasonably should have known that an injury to TICO was substantially certain to result from Powell’s conduct.

35. In the event Debtor’s Bankruptcy Case proceeds under a Chapter of the Bankruptcy Code other than Chapter 13 or if Debtor seeks a hardship discharge under Section 1328(b) of the Bankruptcy Code, the Debtor’s conduct in connection with the Signature Landscaping Project and/or Pre-Petition Date Transfers render the Powell Judgment, Powell Judgment Renewal, and/or TICO Proof of Claim nondischargeable under 11 U.S.C. § 523(a)(6).

RELIEF REQUESTED

WHEREFORE, TICO requests Judgment against the Debtor as follows:

A. Adjudging that Powell’s debt to TICO evidenced by the Powell Judgment, Powell Judgment Renewal, and TICO Proof of Claim is nondischargeable in bankruptcy, pursuant to §§ 523(a)(4) and/or (a)(6) of the Bankruptcy Code;

B. Awarding TICO its attorney’s fees, costs, and expenses incurred in this action pursuant to the Employment Agreement or as otherwise permissible under law [*see Cohen v. De*

1 *La Cruz*, 523 U.S. 213, 118 S.Ct. 1212 (1998); *Travelers Cas. and Sur. Co. of America v.*
2 *Pacific Gas and Elec. Co.*, 549 U.S. 443, 127 S.Ct. 1199 (2007)]; and

3 C. For such other and further relief as the Court deems just and proper.

4 DATED: April 19, 2021.

5 **HUMPHREY LAW PLLC**

6
7 **By:** /s/ L. Edward Humphrey
8 L. Edward Humphrey, Esq.
9 Patrick O'Rourke, Esq.
10 *Attorneys for TICO Construction*
11 *Company Inc*
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EXHIBIT LIST

Exhibit No.	Description	Pages (incl. Cover Sheet)
1	Complaint, filed May 9, 2000 in Case No. CV08-01202	18
2	Judgment on Arbitrator's Award, entered July 23, 2010 in Case No. CV08-01202; Recorded with Washoe County Recorder on September 24, 2010 as DOC # 3926035	10
3	Affidavit of Renewal of Judgment Pursuant to NRS § 17.214, filed July 19, 2016 in Case No. CV08-01202; Recorded with Washoe County Recorder on July 20, 2016 as DOC # 4611760	17

EXHIBIT 1

EXHIBIT 1

FILED

2000 MAY -9 AM 9:32

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BY *Howe*
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CV08-01202 DC-9900003112-003
 TICO CONST. CO VS. GENSEVEN 17 Pages
 District Court 05/09/2008 09:32 AM
 Washoe County \$1425
 nmc

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

11
 12
 13 TICO CONSTRUCTION COMPANY INC.,)
 14 a Nevada corporation,)

Case No.

CV08 01202

Plaintiff,)

Dept. No.

vs.)

17 GENSEVEN DEVELOPMENT AND)
 18 CONSTRUCTION, a Nevada limited liability)
 19 company; JASON POWELL, an individual; and)
 20 DOES I through X, inclusive,)

Defendants.)

COMPLAINT

22
 23 COMES NOW, TICO CONSTRUCTION COMPANY INC., a Nevada corporation
 24 (hereinafter "TICO"), by and through its attorneys of record, John K. Gallagher, Esq., of Guild, Russell,
 25 Gallagher & Fuller, Ltd., and as for its Complaint against GENSEVEN DEVELOPMENT AND
 26 CONSTRUCTION, a Nevada limited liability company (hereinafter "Genseven"); JASON POWELL,
 27 an individual (hereinafter "Powell"), and DOES I through X, inclusive, alleges as follows:
 28

GENERAL ALLEGATIONS

1
2 1. Plaintiff TICO is, and at all times relevant hereto was, a Nevada corporation, and maintains
3 its principal place of business in Washoe County, State of Nevada.

4
5 2. TICO is, and at all times relevant hereto was, a duly licensed contractor in good standing
6 in the State of Nevada, and is engaged in the business of a general contractor.

7
8 3. Jason Powell is, and at all times relevant hereto was, an individual residing in Washoe
9 County, State of Nevada.

10 4. Upon information and belief, Defendant Genseven is, and at all times relevant hereto was,
11 a limited liability company organized and existing under the laws of the State of Nevada, owned and/or
12 managed by Jason Powell, Ryan Hornback and Frank Terrasas, and maintains its principal place of
13 business in Washoe County, State of Nevada.

14
15 5. Upon information and belief, on March 20, 2008, Genseven became a duly licensed
16 general contractor in the State of Nevada.

17 6. The true names and capacities of the Defendants named herein as DOES I through X,
18 inclusive, whether individual, corporate, associate, agent, representative or otherwise, are presently
19 unknown to TICO, who therefore sues the said Defendants by such fictitious names; and when the true
20 names and capacities of DOES I through X, inclusive, are discovered, TICO will seek leave to amend this
21 Complaint to substitute the true names and identities of the said Defendants. TICO is informed, believes
22 and, therefore, alleges, that the Defendants so designated herein are responsible in some manner for the
23 events and occurrences contained in this action.
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1 7. Upon information and belief, TICO alleges that all Defendants were at all times herein
2 mentioned, and now are, the agents and employees of all of the other Defendants and were at all times
3 herein mentioned, and now are, acting within the course of said agency and employment.

4 8. DOES I through X, inclusive, are liable to TICO as hereinafter set forth.

5 9. On May 21, 2007, TICO and Powell entered into an Employment Agreement (hereinafter
6 "Agreement"), whereby Powell accepted employment as Senior Project Manager for TICO.
7

8 10. Under the Agreement, Powell agreed that he would be responsible for soliciting, estimating
9 and managing construction contracts and supervision of all employees and subcontractors involved in the
10 execution of said construction contracts. Powell also agreed that he would be responsible for the recruiting
11 of employees, and for participating in creating and implementing a strategy to ensure the efficiency and
12 profitability of the Company.
13

14 11. Under the Agreement, Powell agreed that he would not, directly or indirectly, engage in
15 any other business or professional occupation for compensation or otherwise would conflict with his agreed
16 upon duties under the Agreement without prior written consent of the Board of Directors of TICO, which
17 consent was at TICO's sole discretion.
18

19 12. Under the Agreement, Powell agreed to "treat as confidential all data and information
20 furnished by TICO or its agents or representatives as confidential and proprietary," and that he would not
21 "divulge such information to third parties without the prior written consent of TICO." Powell
22 acknowledged that he did not take any proprietary information or material from any previous employer
23 for use at TICO.
24

25 13. In return for Powell's performance, TICO agreed to pay Powell the sum of One Hundred
26 Twenty-Five Thousand Dollars (\$125,000.00) per year. Powell was also permitted to share in the annual
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1 profits of TICO, as to be provided in a separate Stock Purchase and Shareholder Agreement. Powell was
2 provided a vehicle allowance, mobile telephone and computer for the conduct of TICO business.

3 14. In this position as Senior Project manager for TICO, Powell was provided with information
4 regarding TICO's business practices, management, finances, employees, contract negotiations, bids and
5 contract proposals.
6

7 15. In September 2007, Alexander V. Hose, President of TICO, became aware that Lebo
8 Newman, the owner of Signature Landscaping, a landscaping design firm in Reno, was considering the
9 construction of a new office building.
10

11 16. Mr. Hose discussed with Powell the Signature Landscaping construction project, and
12 developed a strategy by which TICO would bid on the project and obtain the construction contract.
13

14 17. Powell and another TICO representative met with Lebo Newman in September 2007, at
15 which time TICO submitted an informal proposal to Signature Landscaping for its consideration.

16 18. Throughout September 2007 to January 2008, Powell communicated with Mr. Newman
17 regarding Signature Landscaping's construction project. Powell was the only TICO representative
18 communicating and negotiating with Signature Landscaping during this period.
19

20 19. TICO believed that Powell was negotiating with Signature Landscaping for the purpose
21 of bidding on the construction project. Mr. Hose repeatedly inquired with Powell regarding the status of
22 the Signature Landscaping project.
23

24 20. Upon information and belief, Powell was withholding information from TICO regarding
25 the status of the Signature Landscaping construction project and the time frame for submitting bids and
26 constructions proposals.
27

28 ////

1 21. Upon information and belief, at sometime during September through December 2007, and
2 continuing through January to April 2008, Powell began to negotiate on his personal behalf, and against
3 the interests of TICO, in order to obtain the Signature Landscaping construction project. During the
4 course of the negotiation, Powell was in possession of and had knowledge regarding TICO's business
5 practices, management, finances, employees, contract negotiations, bids, and contract proposals.
6

7 22. Upon information and belief, Powell was communicating with the other members and/or
8 managers of Genseven regarding the Signature Landscaping construction project, and decided to form
9 Genseven for the purpose of bidding on said construction project against TICO.
10

11 23. Upon information and belief, Genseven was formed with the Nevada Secretary of State
12 on December 10, 2007.
13

14 24. On or about January 25, 2008, Mr. Newman of Signature Landscaping informed Powell,
15 through his TICO email account, that it had secured financing for the construction project and was ready
16 to move forward with construction.

17 25. Powell resigned from TICO on January 25, 2008, and informed TICO that he was
18 becoming a full partner at Genseven. Upon information and belief, Powell coordinated his resignation from
19 TICO to coincide with Signature Landscaping's decision to move forward with its construction project.
20

21 26. At the time of Powell's resignation, TICO was not aware of the true status of the Signature
22 Landscaping construction project, including, but not limited to, the time line for the submission and
23 acceptance of bids.
24

25 27. On February 22, 2008, TICO sent a letter via U.S. mail to Powell demanding that Powell
26 comply with his ongoing obligations regarding the confidentiality of TICO's trade secret information under
27 the Agreement. On the same date, TICO sent a letter via U.S. mail to Genseven regarding Powell's duties
28

1 under the Agreement regarding TICO's confidential trade secret information.

2 28. TICO contacted Signature Landscaping in March and April, 2008 regarding the status of
3 the construction project, and submitted a bid for the construction project on April 4, 2008.

4 29. Upon information and belief, Powell and Genseven submitted a bid to Signature
5 Landscaping between January and April, 2008 for the construction project.

6 30. Signature Landscaping made public on or before April 4, 2008 that the construction
7 project had been awarded to Powell and Genseven.

8
9
10 **FIRST CLAIM FOR RELIEF**
11 **(Injunctive Relief Against All Defendants)**

12 31. TICO realleges and incorporates paragraphs 1 through 30 as if set forth fully herein.

13 32. The Agreement executed by Powell for his employment at TICO expressly provided: that
14 Powell agreed to "treat as confidential all data and information furnished by TICO or its agents or
15 representatives as confidential and proprietary," and that he would not "divulge such information to third
16 parties without the prior written consent of TICO."

17 33. Powell, during the course of his employment as the Senior Project Manager at TICO,
18 developed and was provided with confidential and proprietary trade secret information regarding TICO's
19 business practices, management, finances, employees, contract negotiations, bids and contract proposals.

20 34. Powell, during the course of his employment as the Senior Project Manager at TICO, was
21 provided with and generated confidential and proprietary information regarding TICO's bid for the
22 construction project for Signature Landscaping.

23 35. Upon information and belief, Powell formed Genseven and became a member, manager
24 and/or employee of Genseven, for the purpose of competing with TICO.

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1 36. Upon information and belief, Powell resigned from TICO on January 25, 2008 in order
2 to coincide with Signature Landscaping's announcement that it obtained funding for the project and wanted
3 to move forward on with construction, and to direct his full attention to negotiating the contract for his
4 and/or Genseven's financial benefit.

5
6 37. Upon information and belief, Powell disclosed to Genseven and/or used TICO's
7 confidential and proprietary information, without TICO's consent, regarding the status of the Signature
8 Landscaping project, and TICO's proposal and bid on the Signature Landscaping project, so as to ensure
9 that Genseven would be able to receive the construction contract.

10
11 38. Upon information and belief, Powell withheld from TICO information regarding the status
12 of the Signature Landscaping construction project in order to prevent TICO from knowing that Signature
13 Landscaping would be ready to proceed in late January 2008, and to prevent TICO from submitting a bid.

14
15 39. Through his actions, Powell has breached the Agreement by disclosing and/or using
16 TICO's confidential and proprietary trade secret information.

17 40. Upon information and belief, Genseven knowingly encouraged, induced and/or acted in
18 concert with Powell to disclose and/or use TICO's confidential and proprietary trade secret information
19 in violation of the Agreement.

20
21 41. Genseven is now in possession of TICO's confidential and proprietary trade secret
22 information, and is using that information for its own financial benefit.

23
24 42. Upon information and belief, Powell and Genseven can continue to use TICO's trade
25 secret information in their possession against TICO, in order to submit bids and proposals on other
26 projects in the Reno market, to under bid TICO, and deprive TICO of the ability to conduct its business
27 in a meaningful and productive manner.

28

1 43. TICO has fully performed all obligations pursuant to the terms and conditions of the
2 Agreement.

3 44. TICO will suffer immediate and irreparable harm to its business as a result of the continued
4 disclosure and/or use of its confidential and proprietary trade secret information by Powell and Genseven,
5 and is entitled to injunctive relief to enjoin Powell and Genseven from disclosing and/or using TICO's
6 confidential and proprietary trade secret information.
7

8 45. As a result of the Defendants' conduct, it has been necessary for TICO to engage the legal
9 services of the law firm of Guild, Russell, Gallagher & Fuller, Ltd. to prosecute this action and it is entitled
10 to a reasonable attorney's fee in relation thereto.
11

12 **SECOND CLAIM FOR RELIEF**
13 **(Unfair Competition Against All Defendants)**

14 46. TICO realleges and incorporates paragraphs 1 through 45 as if set forth fully herein.

15 47. Powell, during the course of his employment as the Senior Project Manager at TICO,
16 developed and was provided with confidential and proprietary trade secret information regarding TICO's
17 business practices, management, finances, employees, contract negotiations, bids and contract proposals..
18

19 48. Powell, during the course of his employment as the Senior Project Manager at TICO,
20 developed and was provided confidential and proprietary information regarding TICO's bid for the
21 construction project for Signature Landscaping.
22

23 49. Upon information and belief, prior to and upon resigning from his employment at TICO,
24 Powell disclosed and/or used TICO confidential and proprietary trade secret information, including, but
25 not limited to, information regarding the status of the Signature Landscaping project, and TICO's bid and
26 proposal for the Signature Landscaping construction project, to assist Genseven to set up its business and
27 to submit a bid and proposal to Signature Landscaping.
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1 50. Upon information and belief, Genseven encouraged, induced and/or acted in concert with
2 Powell in the disclosure and use of TICO's confidential and proprietary trade secret information for its
3 financial benefit.

4 51. The actions taken by Powell and Genseven have resulted in an unfair economic advantage,
5 and have deprived TICO of the ability to fairly compete in the construction business in the Reno market.

6 52. The Defendants' actions were willful, oppressive, fraudulent and malicious.

7 53. TICO has sustained damages in excess of Ten Thousand Dollars (\$10,000.00) as the
8 proximate result of the Defendants' conduct.
9

10 54. As a result of the Defendants' conduct, it has been necessary for TICO to engage the legal
11 services of the law firm of Guild, Russell, Gallagher & Fuller, Ltd. to prosecute this action and it is entitled
12 to a reasonable attorney's fee in relation thereto.
13

14 **THIRD CLAIM FOR RELIEF**
15 **(Intentional Interference with Prospective Economic Advantage Against All Defendants)**

16 55. TICO realleges and incorporates paragraphs 1 through 54 as if set forth fully herein.

17 56. Powell, in his position as Senior Project Manager at TICO, was aware of and participated
18 in the contract negotiations between TICO and Signature Landscaping for the construction of Signature
19 Landscaping's new office building.

20 57. Powell and Genseven intended, through their intentional and willful disclosure and/or use
21 of TICO confidential and proprietary trade secret information in order to obtain the Signature Landscaping
22 construction contract, to interfere with the contract negotiations between Signature Landscaping and
23 TICO, and to harm TICO's economic interests.

24 58. The Defendants' actions were unlawful, improper and not privileged or justified.

25 59. The Defendants' actions were willful, oppressive, fraudulent and malicious.

26 /////
27

60. TICO has sustained damages in excess of Ten Thousand Dollars (\$10,000.00) as the proximate result of the Defendants' conduct.

61. As a result of the Defendants' conduct, it has been necessary for TICO to engage the legal services of the law firm of Guild, Russell, Gallagher & Fuller, Ltd. to prosecute this action and it is entitled to a reasonable attorney's fee in relation thereto.

FOURTH CLAIM FOR RELIEF
(Misappropriation of Trade Secrets, N.R.S. 600A.010 *et seq.* Against All Defendants)

62. TICO realleges and incorporates paragraphs 1 through 61 as if set forth fully herein.

63. In his position and in the performance of his duties as Senior Project Manager at TICO, Powell was in possession of confidential and proprietary trade secret information of TICO, including but not limited to, confidential and proprietary information regarding the construction bid and proposal submitted by TICO to Signature Landscaping.

64. This confidential and proprietary trade secret information is extremely sensitive and highly valuable to Powell and Genseven, due to the fact that it can be used to gain a competitive advantage over TICO in the Reno construction market, in which both Defendants compete with TICO for construction projects.

65. TICO took reasonable precautions under the circumstances to protect its confidential and proprietary trade secret information by incorporating a confidentiality clause in the Agreement executed by Powell.

66. Upon information and belief, prior to and upon his departure from TICO, Powell used and/or disclosed TICO's confidential and proprietary trade secret information in his position and performance of his duties as a member and/or employee of Genseven, which information was used to obtain the construction contract for Signature Landscaping's new office building.

67. TICO did not consent to the use and/or disclosure of its confidential and proprietary trade secret information by Powell or Genseven.

68. Upon information and belief, Genseven encouraged, induced and/or acted in concert with Powell in the disclosure and/or use of TICO's confidential and proprietary trade secret information for its own financial benefit.

69. The Defendants' use and/or disclosure of TICO's confidential and proprietary trade secret information constitutes misappropriation of trade secrets under the Nevada Uniform Trade Secrets Act, N.R.S. 600A.010 *et seq.*

70. TICO is entitled to an award of attorney's fees, pursuant to N.R.S. 600A.010 *et seq.*

71. The Defendants' actions were willful, oppressive, fraudulent and malicious.

72. TICO has sustained damages in excess of Ten Thousand Dollars (\$10,000.00) as the proximate result of the Defendants' conduct.

73. As a result of the Defendants' conduct, it has been necessary for TICO to engage the legal services of the law firm of Guild, Russell, Gallagher & Fuller, Ltd. to prosecute this action and it is entitled to a reasonable attorney's fee in relation thereto.

FIFTH CLAIM FOR RELIEF
(Unjust Enrichment Against All Defendants)

74. TICO realleges and incorporates paragraphs 1 through 73 as if set forth fully herein.

75. In his position and in the performance of his duties as Senior Project Manager at TICO, Powell was in possession of confidential and proprietary trade secret information of TICO, including but not limited to, confidential and proprietary information regarding the construction bid and proposal submitted by TICO to Signature Landscaping.

76. This confidential and proprietary trade secret information is extremely sensitive and highly valuable to Powell and Genseven, due to the fact that it can be used to gain a competitive advantage over TICO in the Reno construction market, in which both Defendants compete with TICO for construction projects.

////

1 77. Upon information and belief, upon his departure from TICO, Powell used and/or disclosed
 2 TICO's confidential and proprietary trade secret information in his position and performance of his duties
 3 as a member and/or employee of Genseven, which information was used to obtain the construction
 4 contract for Signature Landscaping's new office building.

5
 6 78. Upon information and belief, Genseven encouraged, induced and/or acted in concert with
 7 Powell in the disclosure and/or use of TICO's confidential and proprietary trade secret information for its
 8 own financial benefit.

9
 10 79. By virtue of the Defendants' unauthorized disclosure, use and/or possession of TICO's
 11 confidential and proprietary trade secret information, the Defendants have been unduly enriched by their
 12 wrongful gains.

13 80. The Defendants' actions were willful, oppressive, fraudulent and malicious.

14 81. TICO has sustained damages in excess of Ten Thousand Dollars (\$10,000.00) as the
 15 proximate result of the Defendants' conduct.

16 82. As a result of the Defendants' conduct, it has been necessary for TICO to engage the legal
 17 services of the law firm of Guild, Russell, Gallagher & Fuller, Ltd. to prosecute this action and it is entitled
 18 to a reasonable attorney's fee in relation thereto.
 19
 20

21 **SIXTH CLAIM FOR RELIEF**
 22 **(Breach of Contract Against Powell)**

23 83. TICO realleges and incorporates paragraphs 1 through 82 as if set forth fully herein.

24 84. TICO and Powell entered into a valid employment agreement, wherein Powell agreed he
 25 would not, directly or indirectly, engage in any other business or professional occupation for compensation
 26 or otherwise would conflict with his agreed upon duties, to "treat as confidential all data and information
 27 furnished by TICO or its agents or representatives as confidential and proprietary," and that he would not
 28

1 “divulge such information to third parties without the prior written consent of TICO.

2 85. TICO performed according to the terms of the agreement, by compensating and providing
3 the benefits to Powell as per the terms and conditions of the Agreement.

4 86. Powell failed to perform pursuant to the terms and conditions of the Agreement, and
5 specifically, failed to refrain from engaging in business for compensation while employed by TICO, and
6 disclosed and/or used confidential TICO information for his own personal financial benefit. Powell’s
7 actions constitute a breach thereof.
8

9 87. Powell’s actions were willful, oppressive, fraudulent and malicious.

10 88. TICO has sustained damages in an amount in excess of Ten Thousand Dollars
11 (\$10,000.00) as the proximate result of Powell’s breach.
12

13 89. As a result of the Defendants’ conduct, it has been necessary for TICO to engage the legal
14 services of the law firm of Guild, Russell, Gallagher & Fuller, Ltd. to prosecute this action and it is entitled
15 to a reasonable attorney’s fee in relation thereto.
16

17 **SEVENTH CLAIM FOR RELIEF**
18 **(Contractual Breach of the Implied Covenant of Good Faith and Fair Dealing Against Powell)**

19 90. TICO realleges and incorporates paragraphs 1 through 89 as if set forth fully herein.

20 91. TICO and Powell entered into a valid employment agreement, wherein Powell agreed he
21 would not, directly or indirectly, engage in any other business or professional occupation for compensation
22 or otherwise would conflict with his agreed upon duties, to “treat as confidential all data and information
23 furnished by TICO or its agents or representatives as confidential and proprietary,” and that he would not
24 “divulge such information to third parties without the prior written consent of TICO.
25

26 92. The covenant of good faith and fair dealing is implied in every contract in Nevada.
27

28 ////

1 93. Powell owed TICO a duty of good faith to perform according to the terms of the
2 Agreement.

3 94. Powell failed to perform pursuant to the terms and conditions of the Agreement, and
4 specifically, failed to refrain from engaging in business for compensation while employed by TICO, and
5 disclosed and/or used confidential TICO information for his own personal financial benefit. Powell's
6 actions constitute a breach thereof.

7 95. TICO's justified expectations that Powell would perform pursuant to the terms of the
8 Agreement were denied by Powell's actions.

9 96. Powell's actions were willful, oppressive, fraudulent and malicious.

10 97. TICO has sustained damages in excess of Ten Thousand Dollars (\$10,000.00) as the
11 proximate result of Powell's breach.

12 98. As a result of the Defendants' conduct, it has been necessary for TICO to engage the legal
13 services of the law firm of Guild, Russell, Gallagher & Fuller, Ltd. to prosecute this action and it is entitled
14 to a reasonable attorney's fee in relation thereto.

15
16 **EIGHTH CLAIM FOR RELIEF**
17 **(Tortious Breach of the Covenant of Good Faith and Fair Dealing Against Powell)**

18 99. TICO realleges and incorporates paragraphs 1 through 98 as if set forth fully herein.

19 100. TICO and Powell entered into a valid employment agreement, wherein Powell agreed he
20 would not, directly or indirectly, engage in any other business or professional occupation for compensation
21 or otherwise would conflict with his agreed upon duties, to "treat as confidential all data and information
22 furnished by TICO or its agents or representatives as confidential and proprietary," and that he would not
23 "divulge such information to third parties without the prior written consent of TICO."
24

25 101. The covenant of good faith and fair dealing is implied in every contract in Nevada.
26
27
28

102. Powell, as an employee, owed TICO a duty of good faith to perform according to the terms of the Agreement.

103. As the Senior Project Manager of TICO, Powell occupied an entrusted position.

104. Powell's failure to perform his obligations under the Agreement constituted a breach of his duty of loyalty to TICO and operated to deprive TICO of the intended benefits of the Agreement.

105. Powell's conduct was unreasonable, not in good faith and inconsistent with the purpose of the Agreement and TICO's justified expectations, which conduct constitutes a breach of the implied covenant of good faith and fair dealing.

106. TICO has sustained damages in excess of Ten Thousand Dollars (\$10,000.00) as the proximate result of Powell's breach.

107. As a result of the Defendants' conduct, it has been necessary for TICO to engage the legal services of the law firm of Guild, Russell, Gallagher & Fuller, Ltd. to prosecute this action and it is entitled to a reasonable attorney's fee in relation thereto.

NINTH CLAIM FOR RELIEF
(Breach of Fiduciary Duty Against Powell)

108. TICO realleges and incorporates paragraphs 1 through 107 as if set forth fully herein.

109. Powell was an employee of TICO, and owed a fiduciary duty to TICO.

110. Upon information and belief, Powell breached this duty to TICO, by soliciting potential TICO customers for the purpose of negotiating and executing construction contracts, and by acting in his own personal interests and to the detriment of his employer TICO.

111. TICO has sustained damages in excess of Ten Thousand Dollars (\$10,000.00) as the proximate result of Powell's breach.

////

112. As a result of the Defendants' conduct, it has been necessary for TICO to engage the legal services of the law firm of Guild, Russell, Gallagher & Fuller, Ltd. to prosecute this action and it is entitled to a reasonable attorney's fee in relation thereto.

PRAYER

WHEREFORE, TICO hereby prays for judgment against Powell and Genseven as follows:

1. As to the First Claim for Relief, injunctive relief enjoining Powell and Genseven from disclosing and/or using the confidential and proprietary trade secret information of TICO;
2. As to the Second Claim for Relief, judgment in an amount in excess of Ten Thousand Dollars (\$10,000.00) to be determined at the time of trial;
3. As to the Third Claim for Relief, judgment in an amount in excess of Ten Thousand Dollars (\$10,000.00) to be determined at the time of trial;
4. As to the Fourth Claim for Relief, judgment in an amount in excess of Ten Thousand Dollars (\$10,000.00) to be determined at the time of trial;
5. As to the Fifth Claim for Relief, judgment in an amount in excess of Ten Thousand Dollars (\$10,000.00) to be determined at the time of trial;
6. As to the Sixth Claim for Relief, judgment in an amount in excess of Ten Thousand Dollars (\$10,000.00) to be determined at the time of trial;
7. As to the Seventh Claim for Relief, judgment in an amount in excess of Ten Thousand Dollars (\$10,000.00) to be determined at the time of trial;
8. As to the Eighth Claim for Relief, judgment in an amount in excess of Ten Thousand Dollars (\$10,000.00) to be determined at the time of trial;

////

1 9. As to the Ninth Claim for Relief, judgment in an amount in excess of Ten Thousand Dollars
2 (\$10,000.00) to be determined at the time of trial;

3 10. Attorney's fees pursuant to N.R.S. 600A.010 *et seq.*;

4 11. Punitive and exemplary damages to be determined at the time of trial;

5 12. Interest on all outstanding sums;

6 13. For its costs of suit and reasonable attorneys' fees; and


7 14. For such other and further relief as the Court deems just and proper.
8
9

10 **AFFIRMATION PURSUANT TO NRS 239B.030**

11 The undersigned does hereby affirm that the preceding document does not contain the social
12 security number of any person.

13 DATED this 9th day of May, 2008.
14

15 GUILD, RUSSELL, GALLAGHER
16 & FULLER, LTD.

17 By 

18 JOHN K. GALLAGHER, Esq.

19 Nevada Bar No. 000956

20 BRIAN J. SAEMAN, Esq.

21 Nevada Bar No. 007892

22 100 W. Liberty St., Ste. 800

23 P.O. Box 2838

24 Reno, NV 89505

25 (775) 786-2366

26 Attorneys for Plaintiff TICO Construction
27 Company Inc.
28

EXHIBIT 2

EXHIBIT 2

DOC # 3926035

09/24/2010 01:36:32 PM

Requested By

MARION HOSE

Washoe County Recorder

Kathryn L. Burke - Recorder

Fee: \$22.00 RPTT: \$0.00

Page 1 of 9



APN# _____

Recording Requested by:

Name: Marion Hose

Address: 201 W Liberty St Lower Level

City/State/Zip: Reno NV 89501

When Recorded Mail to:

Name: Marion Hose

Address: 201 W Liberty St Lower Level

City/State/Zip: Reno NV 89501

(for Recorder's use only)

Mail Tax Statement to:

Name: _____

Address: _____

City/State/Zip: _____

Judgment on Arbitrator's Award
(Title of Document)

Please complete Affirmation Statement below:

☐ I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain the personal information of any person or persons.
(Per NRS 239B.030)

-OR-

☐ I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does contain the personal information of a person or persons as required by law: _____
(State specific law)

Signature

Title

Printed Name

This page added to provide additional information required by NRS 111.312 Sections 1-2 and NRS 239B.030 Section 4.

This cover page must be typed or printed in black ink.

(Additional recording fee applies)

FILED

JUL 23 2010

HOWARD W. JOHNSON, CLERK
By *[Signature]*
DEPUTY CLERK

1 CODE 1880
2 PAUL A. KAPITZ, ESQ.
3 Nevada State Bar No. 5386
4 137 Mt. Rose Street
5 Reno, Nevada 89509
6 (775) 329-1888

7 Attorney for Plaintiff

8 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

9 **IN AND FOR THE COUNTY OF WASHOE**

10 * * *

11 TICO CONSTRUCTION COMPANY, INC.,
12 a Nevada corporation,

13 Plaintiff,

14 vs.

CASE NO. CV08-01202

DEPT. NO. B6

15 JASON POWELL,

16 Defendant.

17 **JUDGMENT ON ARBITRATOR'S AWARD**

18 WHEREAS, on July 21, 2008, this Honorable Court entered its Order
19 Granting Jason Powell's Motion to Compel Arbitration; and

20 WHEREAS, the above matter came on for hearing before the Arbitrator,
21 Robert F. Enzenberger, Esq., on Monday, June 21, 2010; and

22 WHEREAS, on June 21, 2010, Robert F. Enzenberger, Esq. issued an
23 Arbitrator's Award, a copy of which is attached hereto as Exhibit "1"; and

24 WHEREAS, Robert F. Enzenberger, Esq. found in favor of Plaintiff TICO
25 Construction Company, Inc. and against Defendant Jason Powell and assessed and
26 awarded damages in the amount of Two Hundred Fifteen Thousand One Hundred
27 Forty Nine and 86/100 Dollars (\$215,149.86), plus reasonable attorneys' fees and
28 costs incurred in connection with this arbitration proceeding.

Paul A. Kapitz
Attorney at Law, PC
137 Mt. Rose Street, Reno, Nevada 89509
(775) 329-1888 FAX (775) 329-1876

CV08-01202
TICO CONST CO VS GENSEVEN
District Court
Washoe County
07/23/2010 12:53 PM
1880
4405

1 THEREFORE, IT IS ORDERED AND ADJUDGED that Plaintiff TICO
2 Construction Company, Inc. recover from Defendant Jason Powell the sum of Two
3 Hundred Fifteen Thousand One Hundred Forty Nine and 86/100 Dollars
4 (\$215,149.86), costs of action in the amount of \$480.00, with interest thereon on
5 all sums at the rate of 5.25% percent as provided by law.

6 DATED this ____ day of _____, 2010.

7 
8 DISTRICT COURT JUDGE

9
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28
Paul A. Kapitz
Attorney at Law, PC
137 Mt. Rose Street, Reno, Nevada 89509
(775) 329-1888 FAX (775) 329-1876

COPY

INDEX OF EXHIBITS

1. ARBITRATOR'S AWARD

Paul A. Kapitz
Attorney at Law, PC
137 Mt. Rose Street, Reno, Nevada 89509
(775) 329-1888 FAX (775) 329-1876

COPY

Paul A. Kapitz
Attorney at Law, PC
137 Mt. Rose Street, Reno, Nevada 89509
(775) 329-1888 FAX (775) 329-1876

EXHIBIT "1"

EXHIBIT "1"

ROBERT F. ENZENBERGER, ESQ.
Nevada Bar No. 2701
1885 South Arlington Avenue, Suite 205
Reno, Nevada 89509
(775) 786-7000
Arbitrator

IN THE ARBITRATION MATTER OF:

TICO CONSTRUCTION COMPANY,
INC., a Nevada corporation,

Plaintiff,

vs.

JASON POWELL, an individual,

Defendant.

ARBITRATOR'S AWARD

The above matter came on for hearing before the undersigned Arbitrator at 9:30 a.m. on Monday, June 21, 2010. Appearing at the arbitration hearing on behalf of TICO Construction Company, Inc., were Alexander Hose, its President, and witness Marion Hose. Jason Powell did not appear at the arbitration hearing.¹ Offered and admitted in evidence were Exhibits 1 through 8, inclusive. Testifying at the arbitration hearing were Alexander Hose, President of TICO Construction Company, Inc., and Marion Hose, the wife of Alexander Hose. After giving due

///

¹ The undersigned arbitrator provided notice of the hearing to both parties by email and US mail on May 18, 2010. Thereafter, an arbitration statement was received on behalf of TICO Construction Company, Inc., but no arbitration statement was received on behalf of Mr. Powell. Further, Marion Hose certified that she mailed a copy of TICO's arbitration statement to Mr. Powell at multiple addresses, including 1201 Mark Twain Ave., Reno, Nevada 89509, which is the address undersigned arbitrator was provided for Mr. Powell. Mr. Powell did communicate by email with the undersigned arbitrator and TICO at 7:22 a.m. the morning of the arbitration hearing providing various information, including that Mr. Powell had been out-of-town looking for work and had not checked his mail in a week. Given prior notice to the parties of the arbitration hearing, the undersigned Arbitrator decided to move forward with the hearing pursuant to NRS 38.231(3).

ENZENBERGER
JASON & MARION
1885 S. ARLINGTON AVE.
SUITE 205
RENO, NV 89509
(775) 786-7000
Fax (775) 786-7000

1 consideration to all evidence, the undersigned Arbitrator makes the following award:

2 Based upon the evidence presented at the arbitration hearing concerning the cause of
3 action for breach of contract, the arbitrator finds in favor of TICO Construction Company, Inc.,
4 and against Jason Powell, and awards damages in the amount of \$215,149.86 plus reasonable
5 attorneys' fees and costs incurred in connection with this arbitration proceeding, pursuant to the
6 employment contract entered into between the parties.

7
8 DATED this 21st day of June, 2010.

9 ENZENBERGER, HUGHS &
10 HERBOLSHEIMER
11 1885 South Arlington Avenue, Suite 205
12 Reno, Nevada 89509
13 Arbitrator

14 By 
15 ROBERT F. ENZENBERGER

16
17
18
19
20
21
22
23
24
25
26
27
28
ENZENBERGER, HUGHS & HERBOLSHEIMER
1885 S. ARLINGTON AVE.
SUITE 205
RENO, NV 89509
TEL (775) 784-7100
FAX (775) 784-7101

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ENZENBERGER, HUGHS & HERBOLSHEIMER, and that on this date, I am serving the foregoing document(s) on the party(s) set forth below by:

XXXXX Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

addressed as follows:


Marion T. Hose
Alexander V. Hose
TICO Construction
201 Liberty Street, lower Level
Reno, Nevada 89501

Jason Powell
1201 Mark Twain Ave.
Reno, Nevada 89509

- ☐ Personal delivery.
☐ Facsimile (FAX).
☐ Federal Express or other overnight delivery.
☐ Reno/Carson Messenger Service.

addressed as follows:

DATED this 21st day of June, 2010.


STACY CULBERT

COPY

CERTIFIED COPY
The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.
DATE: SEP 21 2010
HOWARD W. CONYERS, Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.
By [Signature] Deputy

EXHIBIT 3

EXHIBIT 3

APN# _____

Recording Requested by:

Name: L. Edward Humphrey, Esq.

Address: 201 W. Liberty St. # 204

City/State/Zip: Reno, Nevada 89501

When Recorded Mail to:

Name: TICO Construction Company Inc.

Address: 241 Ridge Street # 150

City/State/Zip: Reno, NV 89501

Mail Tax Statement to:

Name: _____

Address: _____

City/State/Zip: _____

DOC # 4611760

07/20/2016 01:36:19 PM

Requested By

LOUIS E HUMPHREY III

Washoe County Recorder

Lawrence R. Burtness - Recorder

Fee: \$33.00 RPTT: \$0.00

Page 1 of 17



(for Recorder's use only)

Affidavit of Renewal of Judgment

(Title of Document)

Please complete Affirmation Statement below:

☒ I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain the personal information of any person or persons.
(Per NRS 239B.030)

-OR-

☐ I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does contain the personal information of a person or persons as required by law: _____

(State specific law)

L. Edward Humphrey
Signature

Attorney for TICO Construction

Title

L. Edward Humphrey, Esq.

Printed Name

This page added to provide additional information required by NRS 111.312 Sections 1-2 and NRS 239B.030 Section 4.

This cover page must be typed or printed in black ink.

(Additional recording fee applies)

FILED
Electronically
CV08-01202
2016-07-19 02:06:17 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5615652 : yvilloria

1 **CODE: 3783**

2 L. Edward Humphrey—NV Bar. 9066

3 **HUMPHREY LAW PLLC**

201 West Liberty Street, Suite 204

Reno, Nevada 89501

4 Tel: 775.420.3500

5 Fax: 855.485.6329

ehumphrey@hulolaw.com

6 *Attorney for TICO Construction*

7 *Company, Inc.*

8 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
9 **IN AND FOR THE COUNTY OF WAHOO**

10 TICO CONSTRUCTION COMPANY, INC., a
11 Nevada corporation,

12 Plaintiff,

CASE NO.: CV08-01202

DEPT. NO.: B6

13 vs.

14 JASON POWELL,

15 Defendant.

16 **AFFIDAVIT OF RENEWAL OF JUDGMENT**
17 **PURSUANT TO NRS § 17.214**

18 STATE OF NEVADA)
19) ss
20 COUNTY OF WASHOE)

21
22 Plaintiff, TICO Construction Company, Inc., by and through Alexander V. Hose, its
23 President and authorized representative, pursuant to N.R.S. § 17.214, being first duly sworn,
24 submits this *Affidavit of Renewal of Judgment* ("Affidavit") in the above captioned matter.

25 I, Alexander V. Hose, being first duly sworn, declare based on my personal
26 knowledge:
27
28

1 1. I am the President of Plaintiff TICO Construction Company, Inc., and I make
2 this Affidavit based upon my own personal knowledge. If called to testify to the contents of
3 this Affidavit, I could and would competently do so under oath.

4 2. The current judgment creditor in this matter is the Plaintiff, TICO
5 Construction Company, Inc. ("Judgment Creditor"). The current judgment debtor in this
6 matter is Defendant JASON POWELL ("Judgment Debtor").

7 3. A *Judgment on Arbitrator's Award* ("Judgment") favor of Judgment Creditor
8 and against Judgment Debtor was entered by this Court on July 23, 2010.¹ A true and
9 correct copy of the recorded Judgment is attached hereto as Exhibit 1.

10 4. Attached as Exhibit 1 to the Judgment was the *Arbitrator's Award*, dated
11 June 21, 2010 (the "Arbitrator's Award").

12 5. A certified copy of the Judgment, attaching the Arbitrator's Award, was
13 recorded with the Washoe County Recorder's Office on September 24, 2010, as Document
14 No. 3926035. See Exhibit 1.

15 6. The Judgment entered by this Court in favor of Judgement Creditor and
16 against Judgment Debtor was in the amount of \$215,149.86 in principal and \$480.00 in
17 costs, for a total of \$215,629.86, plus post-judgment interest at the statutory rate as provided
18 by law until the Judgment is paid in full.

19 7. There are no writs of execution for enforcement of the Judgment currently
20 outstanding.

21 8. There are no setoffs or counterclaims in favor of the Judgment Debtor.
22
23
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25

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¹ Although N.R.S. § 17.214 (1)(a)(3) requires that judgment creditors recite "the number and page of the docket in which [the Judgment] is entered," the Second Judicial District Court of Nevada has ceased the use of a formal Judgment Docket Report and does not assign numbers or pages to judgments when entered. The Second Judicial District Court utilizes a computerized document depository which provides for and references the judgment by case number. Thus, while Plaintiff/judgment creditors has verified that the judgment in question is contained within the computerized document depository, no judgment "number and page of the docket" can be provided.

1 9. There have been no payments made on the Judgment against Judgment
2 Debtor as of the date of the filing of this Affidavit.

3 10. The amount owed by Judgement Debtor on the Judgment as of July 11, 2016,
4 is \$269,507.22, consisting of principal in the amount of \$215,149.86, costs in the amount of
5 \$480.00, and accrued post-judgment interest at the statutory rate from the date of the
6 Judgment (July 23, 2010) to July 11, 2016 in the amount of \$67, 613.25, **for a TOTAL**
7 **AND EXACT AMOUNT DUE, as of July 11, 2016 of \$283,243.11.**

8 11. Interest will continue to accrue at the statutory rate until the Judgment is paid
9 in full.


10 12. The Judgment is not a foreign judgment from another court.

11 I declare under penalty of perjury under the laws of the State of Nevada that the
12 foregoing is true and correct.

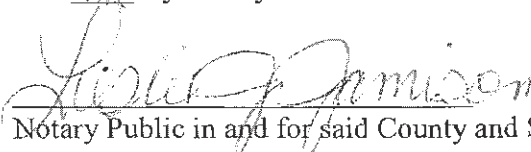
13 **AFFIRMATION**

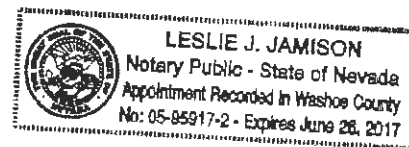
14 The undersigned does hereby affirm pursuant to NRS 239B.030 that this document
15 does not contain the social security of any person.

16 DATED this 12 day of July, 2016.

17 By: 
18 Alexander V. Hose, President
19 TICO Construction Company, Inc.
20

21 SUBSCRIBED and SWORN to
22 before me, by Alexander V. Hose,
23 this 12 day of July 20186.

24 
25 Notary Public in and for said County and State
26



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that service of **AFFIDAVIT OF RENEWAL OF JUDGMENT** was made this date by depositing a copy for mailing, via Certified Mailing, postage prepaid, in Reno, Nevada, to the following:

Jason Powell
1201 Mark Twain Ave.
Reno, Nevada 89509

Jason Powell
339 Winter Park Court
Reno, Nevada 89511

Jason Powell
1721 Saturno Heights Drive
Reno, Nevada 89523

Jason Powell
922 W. Sullivan Ave.
Ridgecrest, CA 93555

Jason Powell
561 Keystone Ave., # 128
Reno, Nevada 89503

Jason Powell
11209 Brockway Rd., STE 102
Truckee, CA 96161

Jason Powell
10041 Church Street #1
Truckee, CA 96161

DATED this 19th day of July, 2016.


An Employee of Murphy Law PLLC

INDEX OF EXHIBITS*TICO Construction, Inc. v. Powell*

(Case No. CV08-01202, Dept. B6)

Exhibit	Description	Pages (incl. Cover Page)
1	Copy of Recorded Judgment	10

FILED
Electronically
CV08-01202
2016-07-19 02:06:17 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5615652 : yvilorla

EXHIBIT “1”

EXHIBIT “1”

APN# _____

Recording Requested by:

Name: Marion Hose

Address: 201 W Liberty St Lower Level

City/State/Zip: Reno NV 89501

When Recorded Mail to:

Name: Marion Hose

Address: 201 W Liberty St Lower Level

City/State/Zip: Reno NV 89501

Mail Tax Statement to:

Name: _____

Address: _____

City/State/Zip: _____

DOC # 3926035

09/24/2010 01:36:32 PM

Requested By

MARION HOSE

Washoe County Recorder

Kathryn L. Burke - Recorder

Fee: \$22.00 RPTT: \$0.00

Page 1 of 9



(for Recorder's use only)

Judgment on Arbitrator's Award
(Title of Document)

Please complete Affirmation Statement below:

☐ I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain the personal information of any person or persons.
(Per NRS 239B.030)

-OR-

☐ I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does contain the personal information of a person or persons as required by law: _____
(State specific law)

Signature _____

Title _____

Printed Name _____

This page added to provide additional information required by NRS 111.312 Sections 1-2 and NRS 239B.030 Section 4.

This cover page must be typed or printed in black ink.

(Additional recording fee applies)

3926035 Page 2 of 9 - 09/24/2010 01:36:32 PM

CV08-01202
TICO CONST. CO. VS
DISTRICT COURT
WASHOE COUNTY
07/23/2010 12:53 PM
1880
LAME

Paul A. Kapitz
Attorney at Law, PC
137 Mt. Rose Street, Reno, Nevada 89509
(775) 329-1888 FAX (775) 329-1876

1 CODE 1880
2 PAUL A. KAPITZ, ESQ.
3 Nevada State Bar No. 5386
4 137 Mt. Rose Street
5 Reno, Nevada 89509
6 (775) 329-1888

7 Attorney for Plaintiff

FILED

JUL 23 2010

HOWARD W. CONYERS, CLERK
BY *[Signature]*
DEPUTY CLERK

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9
10 IN AND FOR THE COUNTY OF WASHOE

11 TICO CONSTRUCTION COMPANY, INC.,
12 a Nevada corporation,

13 Plaintiff,

14 vs.

15 JASON POWELL,

16 Defendant.

CASE NO. CV08-01202

DEPT. NO. B6

17 JUDGMENT ON ARBITRATOR'S AWARD

18 WHEREAS, on July 21, 2008, this Honorable Court entered its Order
19 Granting Jason Powell's Motion to Compel Arbitration; and

20 WHEREAS, the above matter came on for hearing before the Arbitrator,
21 Robert F. Enzenberger, Esq., on Monday, June 21, 2010; and

22 WHEREAS, on June 21, 2010, Robert F. Enzenberger, Esq. issued an
23 Arbitrator's Award, a copy of which is attached hereto as Exhibit "1"; and

24 WHEREAS, Robert F. Enzenberger, Esq. found in favor of Plaintiff TICO
25 Construction Company, Inc. and against Defendant Jason Powell and assessed and
26 awarded damages in the amount of Two Hundred Fifteen Thousand One Hundred
27 Forty Nine and 86/100 Dollars (\$215,149.86), plus reasonable attorneys' fees and
28 costs incurred in connection with this arbitration proceeding.

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1 THEREFORE, IT IS ORDERED AND ADJUDGED that Plaintiff TICO
2 Construction Company, Inc. recover from Defendant Jason Powell the sum of Two
3 Hundred Fifteen Thousand One Hundred Forty Nine and 86/100 Dollars
4 (\$215,149.86), costs of action in the amount of \$480.00, with interest thereon on
5 all sums at the rate of 5.25% percent as provided by law.
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7 DATED this ____ day of _____, 2010.

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9 DISTRICT COURT JUDGE
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Paul A. Kapitz
Attorney at Law, PC
137 Mt. Rose Street, Reno, Nevada 89509
(775) 329-1808 FAX (775) 329-1876

INDEX OF EXHIBITS

1. ARBITRATOR'S AWARD

Paul A. Kapitz
Attorney at Law, PC
137 Mt. Rose Street, Reno, Nevada 89509
(775) 329-1888 FAX (775) 329-1876

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137 Mt. Rose Street, Reno, Nevada 89509
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EXHIBIT "1"

EXHIBIT "1"

1 ROBERT F. ENZENBERGER, ESQ.
 Nevada Bar No. 2701
 2 1885 South Arlington Avenue, Suite 205
 3 Reno, Nevada 89509
 4 (775) 786-7000
 Arbitrator

6 IN THE ARBITRATION MATTER OF:

7 ***

9 TICO CONSTRUCTION COMPANY,
 INC., a Nevada corporation,

10 Plaintiff,

11 vs.

12 JASON POWELL, an individual,

13 Defendant.

14 ARBITRATOR'S AWARD

15 The above matter came on for hearing before the undersigned Arbitrator at 9:30 a.m. on
 16 Monday, June 21, 2010. Appearing at the arbitration hearing on behalf of TICO Construction
 17 Company, Inc., were Alexander Hose, its President, and witness Marion Hose. Jason Powell did
 18 not appear at the arbitration hearing.¹ Offered and admitted in evidence were Exhibits 1 through
 19 8, inclusive. Testifying at the arbitration hearing were Alexander Hose, President of TICO
 20 Construction Company, Inc., and Marion Hose, the wife of Alexander Hose. After giving due

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 23
 24 ¹ The undersigned arbitrator provided notice of the hearing to both parties by email
 25 and US mail on May 18, 2010. Thereafter, an arbitration statement was received on behalf
 26 of TICO Construction Company, Inc., but no arbitration statement was received on behalf of
 27 Mr. Powell. Further, Marion Hose certified that she mailed a copy of TICO's arbitration
 28 statement to Mr. Powell at multiple addresses, including 1201 Mark Twain Ave., Reno,
 Nevada 89509, which is the address undersigned arbitrator was provided for Mr. Powell. Mr.
 Powell did communicate by email with the undersigned arbitrator and TICO at 7:22 a.m. the
 morning of the arbitration hearing providing various information, including that Mr. Powell
 had been out-of-town looking for work and had not checked his mail in a week. Given prior
 notice to the parties of the arbitration hearing, the undersigned Arbitrator decided to move
 forward with the hearing pursuant to NRS 38.231(3).

4/22/2010
 JACOB & KATHLEEN
 1429 S. 4th Street
 Suite 205
 Reno, NV 89502
 Phone (775) 786-7000

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1 consideration to all evidence, the undersigned Arbitrator makes the following award:

2 Based upon the evidence presented at the arbitration hearing concerning the cause of
 3 action for breach of contract, the arbitrator finds in favor of TICO Construction Company, Inc.,
 4 and against Jason Powell, and awards damages in the amount of \$215,149.86 plus reasonable
 5 attorneys' fees and costs incurred in connection with this arbitration proceeding, pursuant to the
 6 employment contract entered into between the parties.

7
 8 DATED this 21st day of June, 2010.

9 ENZENBERGER, HUGHES &
 10 HERBOLSHEIMER
 1885 South Arlington Avenue, Suite 205
 Reno, Nevada 89509
 Arbitrator

11 By 
 12 ROBERT F. ENZENBERGER
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ENZENBERGER, HUGHES & HERBOLSHEIMER
 1885 S. ARLINGTON AVE., SUITE 205
 RENO, NV 89509
 (775) 784-1111
 FAX (775) 784-1112

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CERTIFICATE OF SERVICE

Pursuant to NRCF 5(b), I certify that I am an employee of ENZENBERGER, HUGHES & HERBOLSHEIMER, and that on this date, I am serving the foregoing document(s) on the party(s) set forth below by:

XXXXXX Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

addressed as follows:

Marion T. Hose
Alexander V. Hose
TICO Construction
201 Liberty Street, lower Level
Reno, Nevada 89501

Jason Powell
1201 Mark Twain Ave.
Reno, Nevada 89509

- ☐ Personal delivery.
- ☐ Facsimile (FAX).
- ☐ Federal Express or other overnight delivery.
- ☐ Reno/Carson Messenger Service.

addressed as follows:

DATED this 21st day of June, 2010.

Stacy Culbert
STACY CULBERT

RECEIVED
JUN 24 2010
CLERK OF COURT
COUNTY OF WASHOE
STATE OF NEVADA

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COPY

CERTIFIED COPY
The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.
DATE: SEP 21 2010
HOWARD W. CONYERS, Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.
By [Signature] Deputy